

APPEAL NO. 022662  
FILED NOVEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 26, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, therefore the herniated discs and degenerative disc disease in her lumbar spine are not compensable herein and further, and that because the claimant did not sustain a compensable injury, she did not have disability. The hearing officer also determined that the respondent (carrier) did not waive the right to contest compensability because the contest it filed on June 26, 2002, is based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus the carrier is allowed to reopen the issue of compensability. The claimant appealed on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

Injury, extent of injury, and disability are questions of fact for the hearing officer to resolve. The claimant had the burden of proof to establish that her injury arose out of and in the course and scope of her employment, and that disability resulted from the compensable injury. There was conflicting evidence presented with regard to these issues. The hearing officer could infer from the evidence, as she did, that the claimant's injury and subsequent inability to work were not work-related. We will not reverse the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that the carrier may reopen the issue of compensability and file a TWCC-21 based on newly discovered evidence. Section 409.021(d) provides that a carrier may reopen the issue of the compensability of an injury if it learns of evidence that could not reasonably have been discovered earlier. Whether evidence could have been reasonably discovered earlier was a matter within the sound discretion of the hearing officer. See Texas Workers' Compensation Commission Appeal No. 92038, decided March 20, 1992. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge